

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY C. TRACY

Claimant

VS.

BOHEMIAN KENNEL, INC.

Respondent

AND

INSURANCE CO. UNKNOWN

Insurance Carrier

Docket No. 1,007,313

ORDER

Respondent requests review of the July 16, 2003 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge (ALJ) found the respondent's business is not an agricultural pursuit and therefore the parties are subject to the Kansas Workers Compensation Act. The ALJ further determined timely notice was provided and claimant suffered a compensable injury. Consequently, the ALJ determined claimant was entitled to temporary total disability compensation as well as medical treatment.

The respondent requests review of the following issues: (1) whether the ALJ erred in finding the respondent is not an agricultural pursuit; (2) whether the claimant's accidental injury arose out of and in the course of employment; and, (3) whether the claimant gave timely notice.

Claimant requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the ALJ's Order should be affirmed.

The respondent operates a greyhound kennel. Ninety percent of the dogs are owned by respondent and the remainder are customers whose dogs are boarded and raised at respondent's kennel. The dogs are bred, whelped and raised at respondent's kennel until the age of one year. The dogs are then sent to a facility in Oklahoma for training to race around a track. At 14 to 15 months of age the dogs return and racetrack training is completed in Abilene, Kansas. The dogs are then sent to race at various greyhound tracks around the country.

Initially, respondent argues that it is engaged in an agricultural pursuit and not covered by the Workers Compensation Act.¹ The ALJ concluded that respondent's business was not an agricultural pursuit based upon the following analysis:

The Court is unable to conclude that raising and boarding greyhound dogs, or training those dogs for racing, is an "agricultural pursuit" within the meaning of the Act. In *Witham v. Parris*, 11 Kan. App. 2d 303, 720 P.2d 1125 (1986), the Kansas Court of Appeals determined that raising and boarding horses is not an agricultural pursuit, but a commercial activity. By analogy, if raising and boarding horses, animals more traditionally associated with agriculture, is not an agriculture pursuit, then raising and boarding dogs cannot by [sic] an agricultural pursuit.²

The Board agrees and adopts the ALJ's analysis that respondent was not engaged in an agricultural pursuit within the meaning of K.S.A. 44-505(a)(1).

The claimant was employed by respondent to feed the dogs, clean the dog runs, move dog food as well as other tasks such as filling in holes the dogs would dig. On approximately August 20, 2002, bags of dog food were delivered at the kennel and claimant carried the 40-pound sacks of dog food into the back room where the food was stored. While carrying the dog food claimant initially experienced pain in her left shoulder. She testified that she told respondent's owner that she was hurt later that same day.

Although the respondent's owner denied claimant told him of her injury on August 20, 2002, nonetheless, he agreed that on September 3, 2002, after he returned from the Labor Day holiday, he was advised claimant was having neck pain related to an injury moving the dog food.³ This constitutes timely notice within ten days of August 20, 2002, excluding intervening weekends and holidays.⁴

¹ See K.S.A. 44-505(a)(1).

² Order at 1.

³ P.H. Trans. at 93.

⁴ K.S.A. 44-520; K.S.A. 44-551(b)(1).

Lastly, there was no testimony that refuted claimant's description of the accident. Accordingly, she has met her burden of proof that she suffered accidental injury arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, of the Board that the Order of Administrative Law Judge Bruce E. Moore dated July 16, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2003.

BOARD MEMBER

c: Scott Price, Attorney for Claimant
Patrik W. Neustrom, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director